current requirement if a dispute cannot be resolved. However, Ameritech prefers to work with the requesting carrier by reviewing jointly with the carrier floor plan drawings detailing the lack of available physical space. This examination should suffice in lieu of a tour of the premises to prove the same thing. If the requesting collocating carrier is not satisfied subsequent to an examination of the floor plan drawings, Ameritech will voluntarily go to the state commission to present its case.

Further, the reports proposed by the Commission would be extremely burdensome. The Commission proposes that the reports effectively be customized to the needs of each requesting carrier – specifying "the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report" and "measures that the ILEC is taking to make additional space available for collocation."[69] Further, the report may be of little lasting value since the information would change frequently -- monthly, weekly, or for that matter daily in certain offices. The Commission should, therefore, be reluctant to impose such a requirement. At a minimum, it should not prohibit ILECs from recovering the cost of such a reporting mechanism from any carrier that requests it.

Warehousing of space. The Commission has asked whether its rules on the "warehousing" of space should be modified.[70] Ameritech has a space reservation policy that guarantees that it is treated no less favorably than unaffiliated entities when it comes to the reservation of space in Ameritech central offices. This policy has been included in

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[69] Id.

[70] NPRM, ¶149.

Ameritech's federal tariff[71] and in tariffs in three states (Illinois, Michigan, and Wisconsin) and is contained in numerous approved interconnection agreements.[72] The Commission need do nothing more to safeguard equitable treatment of interconnecting carriers.

C. The Commission Should Not Place Unreasonable Restrictions on Collocation by an Advanced Services Affiliate.

The Commission seeks comment on its tentative conclusion that an advanced services affiliate should not be permitted to collocate its switching equipment if there is only enough room in the central office for one carrier to collocate such equipment.[73]

The Commission should not adopt the prohibition. It would result in needlessly preventing affiliate collocation in offices in which no other provider may have an interest – if there is room for only one collocation arrangement in the office. Apart from that, such a separate requirement is completely unnecessary. The Commission has proposed that the ILEC may not discriminate in favor of its affiliate in the provision of any services or facilities.[74] If collocation is to be offered on a nondiscriminatory basis to both the ILEC's advanced services affiliate and to non-affiliates, there is no reason for the Commission to create any absolute prohibition. If requests are handled on a documented first-come, first-served basis, no competitive provider will be unduly disadvantaged.

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[71] See, Attachment 4, the provisions from Ameritech's federal expanded interconnection tariff.

[72] See, e.g., Attachment 5, the provisions from Ameritech's interconnection agreement with AT&T.

[73] NPRM, ¶131.

[74] Id., ¶96.

VI. SEPARATE DATA AFFILIATE ISSUES

A. Structural Separation is Not a Prerequisite to Non-ILEC Status for Purposes of Section 251(c).

The Commission proposes that if an ILEC's data affiliate "would not be deemed an ILEC, it should comply with the following structural separation and nondiscrimination requirements."[75] This proposal that an ILEC's data subsidiary be deemed to be an ILEC only if it does not meet all of the Commission's separation requirements goes too far and is inconsistent with the law. Although the Commission has the power to impose structural separation, onerous structural separation is not required for an affiliate not to be an ILEC and, therefore, not subject to the requirements of section 251(c) of the Act.

There are three ways that an entity can be an ILEC. First, it can come within the definition of that term under section 251(h)(1)(A) and (B)(i) of the Act. Second, it can be a "successor or assign" of an ILEC under section 251(h)(1)(C)(ii) of the Act. Third, it can be declared by the Commission to be "comparable" to an ILEC under section 251(h)(2) of the Act, where the three conditions specified in subsection (A) through (C) are met.

Of course, none of these statutory sections make structural separation a condition of an ILEC status. As such, the Commission's proposal is too broad and includes many circumstances where, although the Commission's separation requirements are not met, the data affiliate has not in some way replaced an ILEC.

ILEC. The definition of "ILEC" under Section 251(h)(1)(A) and unambiguously limits the ILEC categorization to entities that were providing telephone exchange service

[75] NPRM, ¶96.

and was a member of the national exchange carrier association on February 6, 1996.[76] Section 251(h) makes no distinction between entities that are affiliated or unaffiliated with an ILEC. Rather, the statutory criterion is whether the entity was the provider of local exchange service and was a member of NECA on February 6, 1996. Unless the data affiliate meets both statutory conditions, it is not an ILEC.

Consistent with this interpretation, the Commission has determined that a carrier cannot be an ILEC if it did not start to provide exchange service until after February 6, 1996.[77] Moreover, the Commission has held that a carrier is not an ILEC, even if it provided exchange service on February 6, 1996, unless it was or is deemed to have been a member of NECA on that date.[78] In order to be deemed to be a member of NECA, the Commission has found that the carrier must "participate in the distribution of Carrier Line revenue requirement, pay long term support to association Common Line Tariff participants, or receive payments from the transitional support fund . . . ."[79] Consistent with position that not every carrier providing exchange service is automatically an ILEC, the Commission has already determined that cellular providers and cable companies are not ILECs.[80] Thus, it is highly unlikely that any data affiliate of an ILEC will qualify as

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[76] 47 U.S.C. §251(h)(1)(A).

[77] South Park Telephone Company Petition for Waiver of Sections 36.612 of the Commission's Rules, DA 97-2730, Order, released December 31, 1997, ¶ 11.

[78] Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act; Treatment of Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers Under Section 251(h) of the Communications Act, CCB Pol. 96-18, CC Docket No. 91-134, ("Guam Docket"), Declaratory Ruling and Notice of Proposed Rulemaking; released July 28, 1997, ¶¶2, 14, hereinafter ("Guam Declaratory Ruling").

[79] 47 CFR § 69.601(b). See, Guam Declaratory Ruling ¶4.

[80] Local Competition Order, ¶1006.

an ILEC. More importantly, none was an exchange carrier on that date and was a member of NECA.

Successor or Assign. Under most circumstances an ILEC's data affiliate will not qualify as its "successor or assign." Section 251(h)(1)(B)(ii) of the Act provides that a "successor or assign" of an ILEC is also an ILEC. However, the fact that an entity is affiliated with an ILEC is not enough to automatically make it the ILEC's successor or assign. In order to be a successor or assign, the data affiliate must "replace" the ILEC's data operations through the transfer of its exchange telephone data local network assets, and must operate its data business.

Although the term "successor or assign" is not defined in TA96, it is axiomatic that it applies to a business enterprise that has replaced another. For example, in considering a plan by Southern New England Telecommunications Corporation ("SNET") to establish an in-region affiliate, the Department of Public Utility Control held:

> In Connecticut, a successor has always been interpreted to constitute anther corporation which, by a process of amalgamation, consolidation, or duly authorized legal succession, has become invested with the rights and assumed the burdens of the first corporation. *To be a successor, the succeeding corporation should, in all material aspects, 'stand in the boots of the old one.'* The Department, therefore, concludes that SNET's proposal, which entails assumption of retail activities by [an affiliate], does not place [the affiliate] in the stead of the Telco in all material respects.[81]

Likewise, in addressing the spin-off by Pacific Telesis of its cellular subsidiary, and determining whether the new cellular entity would be subject to the Modification of Final Judgment, the United States Department of Justice noted that "[t]he term

[81] DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of Public Act 94-83, Docket No. 94-10-05, released June 25, 1997, at 45-49 (citations omitted).

'successor' generally refers to one who takes the place of another and retains the same rights, obligations, and property."[82] The Department conceded that "most transferees of BOC assets would not be successors to the BOCs for purposes of the decree." It argued, however, that insofar as Pacific had spun off its entire cellular business, and that business would continue to operate intact, AirTouch should be considered a successor or assign of Pacific."[83]

Applying these principles here, in order to become a successor or assign, the data affiliate should replace its ILEC's local exchange data operations through transfer of relevant network facilities that mean that the ILEC no longer offers the relevant services and network elements in the area. Where no such transfer has occurred, the data affiliate cannot be an ILEC.

"Comparable" to an ILEC. Section 251(h)(2) authorizes the Commission to provide "by rule" for the treatment of a LEC or a class of LECs as an ILEC, where the entity is "comparable" to an ILEC. The section provides for three conditions, all of which must be met, before an entity can be declared to be comparable to an ILEC.

The Commission has determined that it can only declare an entity to be an incumbent through a proceeding, and that the entity involved must meet all three conditions specified in the section.[84] According to the Commission it:

> will not impose ILEC obligations on non-ILECs absent a clear and convincing showing that the LEC occupies a position in the telephone exchange marketplace comparable to the position held by an ILEC, has substantially replaced an ILEC,

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[82] Response of the United States in Opposition to AirTouch's Motion for Declaratory Ruling that it is Not Subject to the Decree, Civil Action No. 82-0192, March 13, 1995 at 16.

[83] Id.

[84] See Local Competition Order, ¶1248.

and that such treatment would serve the public interest, convenience and necessity and the purposes of section 251.[85]

In two later orders, the Commission concluded that an entity occupies a position comparable to an ILEC if it has a "dominant position in that market."[86] The Commission also concluded that the second requirement of "replacing" the ILEC can be met "where the LEC at issue provides local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from a NECA member as of the date of enactment of the 1996 Act."[87] Applying the Commission's principles here, a data affiliate of an ILEC should be declared to be comparable to an ILEC, where the Commission finds that the affiliate has a dominant position in the relevant market, and has in some way replaced the ILEC's operations, as the incumbent provider of local exchange data services and network elements.

In summary, it is highly unlikely that in most instances a data affiliate will meet the statutory qualifications necessary for it to be an ILEC subject to the obligations of Section 251(c). Therefore, although the Commission can impose structural separation, it should not make those requirements a condition of not having to meet the obligations of an ILEC under Section 251(c) of the Act. Rather, the Commission should enforce its separation requirements through other enforcement mechanisms available to it. Nonetheless, as discussed below, Ameritech is willing to adopt structural separations as a

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[85] Id.

[86] Guam Declaratory Ruling ¶ 25. See also, Guam Docket, Report and Order, released July 15, 1998, ¶6, where the Commission "adopted. . . the rule proposed in the Guam [Declaratory Ruling]."

[87] Id. See, also ¶¶31-32.

component of a tailored de-regulatory approach that results in limited interLATA relief for data services.

B. The Commission Should Clarify That Its Data Subsidiary Requirements Are Based on Section 272.

In the NPRM, the Commission listed the proposed separation requirements under which ILECs may elect to offer advanced telecommunications capabilities free from the onerous unbundling and resale duties of the 1996 Act.[88] While these proposed requirements are clearly based on those specified in the Commission's rules governing BOC interLATA separate subsidiaries, the NPRM does not so note. As discussed in the following sections, the Commission should explicitly clarify in several respects that the Section 272 model is intended to apply to ILEC provision of advanced telecommunications capabilities.

C. Joint Marketing By an ILEC of Its Data Affiliate's Advance Telecommunications Capabilities is Permissible.

Although the NPRM did not so specify, the Commission should clarify that the rules permit ILECs to jointly market their own local exchange service offerings with services offered by their data affiliates without violating the general nondiscrimination provisions of the proposed rules. In directly applying the language of section 272, the Commission rejected attempts by the IXCs to prohibit various joint marketing activities by BOCs who seek to offer their own local exchange services with interLATA services provided by their interLATA subsidiaries.[89] The same result should follow in the instant context.

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[88] NPRM, ¶¶95-6.

[89] First Report and Order and FNPRM, CC Docket No. 96-149, 11 FCC Rcd. 22055 (1996) (hereinafter "Non-Accounting Safeguards Order"), at ¶¶291-3.

The consumer benefits resulting from such an arrangement are obvious and manifold. They include the well-known customer preference for "one-stop shopping" (securing related services from a single vendor), as well as convenient bundling and discounting of related and complimentary services.[90] From the provider's standpoint, joint marketing also translates directly to lower consumer pricing due to integrated fulfillment and delivery. Joint marketing also presents the potential for faster delivery of new advanced services since the data affiliate would not be required to recruit, hire, and train the type of advanced technical marketing and sales expertise demanded by advanced telecommunications capabilities and applications.

For purposes of defining the scope of permissible joint marketing activities, the Commission should rely upon its earlier assessment of joint BOC marketing of interLATA services under Section 272. In that context, the Commission held that

> "activities such as customer inquiries, sales functions and ordering, appear to involved only the marketing and sale of a section 272 affiliate's services, as permitted by section 272(g). Other activities identified by the parties, however, appear to be beyond the scope of section 272(g), because they may involve BOC participation in the planning, design, and development of a section 272 affiliate's offerings."[91]

D. ILECs Should be Permitted to Perform Operations, Installation And Maintenance on Equipment And Facilities Owned by Their Data Affiliates.

In adopting a requirement that an ILEC must "operate independently from its (advanced data) affiliate, the Commission has proposed that "the incumbent may not

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[90] Customer preference for one-stop shopping was doubtless a major factor in the decision of AT&T (one of America's largest internet access providers and IXCs) to acquire Teleport (a local service provider in markets across the nation) and TCI (which offers cable TV, and local exchange services over its cable plant in Ameritech's region). Time Warner offers cable modem service in several markets, as well as local exchange and private line service. RCN offers local exchange, long distance, internet access, and other services.

perform operating, installation, or maintenance functions for the affiliate."[92] Despite its decision to the contrary in applying section 272 to BOC interLATA affiliates, ample reason exists for the Commission to permit ILECs to perform operations, installation and maintenance work on equipment and facilities owned by their advanced data services affiliates. If ILECs are truly to "make their decisions to invest in and deploy advanced telecommunications services based on their market and their business plans, rather than regulation"[93], it follows that ILEC data affiliates cannot be placed at an artificial disadvantage relative to their actual and potential competitors. For this reason, the Commission should not prohibit ILECs from performing operations, installation and maintenance effort on equipment and facilities owned by their separate data affiliates, a service which ILECs can and do perform on behalf of non-affiliates who collocate equipment or facilities in ILEC space.

Joint operations capability is particularly important with respect to equipment and facilities transferred from the ILEC to a data affiliate under the proposed "de minimis" rule. Otherwise, the affiliate would be forced, for no good reason, to replace ILEC personnel with the knowledge and expertise in such equipment and facilities.

Nonaffiliates are fully protected by the full panoply of nondiscrimination safeguards proposed for ILEC data affiliates. As proposed in the NPRM, these include arms-length dealing, written and publicly-disclosed transactions with the affiliated ILEC, existing affiliate transaction safeguards including full-blown Part 64 accounting, separate books, records and accounts, purchase of all services pursuant to tariffs or

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[91] Non-Accounting Safeguards Order, ¶ 296.

[92] NPRM, ¶96.

interconnection agreements, and nondiscrimination as to network interfaces and systems. The Commission should make clear that an ILEC's data affiliate is entitled to no worse treatment than its competitors who also elect to use ILEC collocation space. Because it would work directly against the achievement of the stated goal of the Commission's current effort "to facilitate the ability of competing carriers to offer advanced services on an equal footing with incumbent carriers and their affiliates"[94], the proposed rule should not be adopted.

E. The Transfer of limited ILEC Facilities Used by a Data Affiliate to Provide Advanced Telecommunications Capability Should Not Render The Affiliate a "Successor or Assign" of The ILEC For Purposes of Section 252(h).

Ameritech supports the Commission's tentative conclusion[95] that a "de minimis exception" should apply to transfers (during a limited time period) of ILEC facilities used specifically to provide advanced services, insulating the ILEC's data affiliates from the section 251 duties of an ILEC. In particular, this exception should apply to "DSLAMs, packet switches, and transport facilities, and not to other network elements , such as loops."[96] In the case of the ILECs, these are the components of the very infrastructure for which Congress intended to remove investment barriers. Ameritech suggests that the Commission develop specific guidelines regarding asset transfers of the network components cited in the NPRM, so that data affiliates may move forward with deployment of advanced telecommunications capability in a timely fashion.

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[93] NPRM, ¶13.

[94] NPRM, ¶14 (emphasis added).

[95] NPRM, ¶ 108.

[96] Id.

This reasonable exception to the "successors and assigns" reach of the Act should not be limited to transfers to the affiliate of equipment and facilities which the ILEC has ordered but not installed, nor should it be limited to transfers which take place prior to the NPRM's release date.[97] ILECs which have already invested in these components prior to the Commission's adoption of rules pursuant to section 706 should not be penalized for their decisions to do so. Such a step would serve no purpose other than to hand an unjustified advantage to the many established, facilities-based CLECs (not to mention those deploying technologies other than the wireline network) who are already providing advanced data services. Moreover, such a decision would clearly discourage ILEC investment in advanced telecommunications capability.

F. An Advanced Services Affiliate Should Be Permitted to Provide Both Data and InterLATA Services.

Since the Commission's proposed structural separation requirements for advanced data affiliates is based upon section 272, the final rules adopted in this proceeding should permit the combination of data and interLATA affiliates into a single corporate entity. To require the BOCs to structure, staff and maintain two separate subsidiaries for two different purposes would introduce needless inefficiencies due to the pointless duplication of innumerable overhead or "staff" functions (including, e.g., separate books, records, accounts, officers, directors, employees). Such a requirement would unfairly deny ILEC affiliates the benefits of integrated data/interLATA operations which are readily available to their competitors, while serving no rational prophylactic purpose.

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[97] NPRM, ¶ 109.

In addition to the economic and operational efficiencies which would be denied ILEC affiliates by such a requirement, the consumer-related benefits include lower service prices due to reduced network costs resulting from shared building/leased space, elimination of unnecessary transport between physical facilities of the two subsidiaries, and reduced supplier payments due to increased vendor leverage. Lower service prices would also result from operational efficiencies flowing from combined on-call and site-technician teams, centralized network management, monitoring and OSS, as well as from minimized marketing, sales and staff costs resulting from a single, shared marketing, sales and design engineering team.

A second tier of consumer benefit would take the form of increased competition, since ILECs would be able to deliver the levels of service and reliability required by users of large data networks. This would occur because high-tier data expertise could be integrated without a needless interLATA/intraLATA division. Customers would also have a new option of a single point of contact for all customer and service inquiries, resulting in complete accountability and "one-stop" trouble reporting and resolution. Shorter provisioning times would be possible because of seamless network facilities and operations. Improved service reliability would also result from combined data and interLATA service entities because a single integrated network would eliminate a redundant layer of switching and transport between two subsidiaries, thus reducing the number of potential failure points. Moreover, a single set of OSS would ensure more effective network management, monitoring and troubleshooting.

G. The Separate Data Subsidiary Requirements Should Sunset Upon Widespread Deployment of Advanced Telecommunications Capability.

No party has suggested that the Commission's proposed separation requirements for ILEC data subsidiaries are required in perpetuity. In fact, there is good reason and precedent to permit the separation requirements to expire naturally upon widespread deployment of advanced telecommunications capability. In that construct, ILECs would be permitted to offer advanced data services on a fully-integrated basis with their local exchange services upon achievement of predefined deployment objectives (e.g., availability of advanced telecommunications capability to 50% of local exchange customers served by an ILEC). This would be in keeping with the approach of section 272 of the 1996 Act -- the statutory basis for the Commission's proposed separation requirements -- which mandates its own demise "3 years after the date such BOC or any BOC is authorized to provide interLATA services under section 271(d) ... ."[98] In addition, such a provision would have the undeniable effect of giving ILECs a strong incentive to deploy advanced telecommunications capability in a timely manner, and thus to shorten the time during which the economic and operational inefficiencies that flow from a separate subsidiary requirement work to the ILEC's detriment in the marketplace.

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[98] 47 U.S.C. § 271(f)(1). This provision permits the Commission to extend the 3-year period "by rule or order." Id.

VII. THE COMMISSION SHOULD GRANT BOCs TARGETED INTERLATA RELIEF TO FACILITATE UBIQUITOUS DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY.

As the Commission recognizes,[99] one of the primary objectives of the 1996 Act is to promote innovation and investment by all telecommunications providers in advanced telecommunications capability in order to ensure that all Americans have the opportunity to participate meaningfully in our rapidly changing economy. Unfortunately, while the NPRM pays lip service to this goal, its proposals to encourage BOC investment in advanced data services are tepid at best. Indeed, what the Commission characterizes as regulatory "relief" is actually nothing more than a legally questionable, overly regulatory interpretation of a data affiliate's position as an ILEC under section 251(h).

Nevertheless, the cupboard is not completely bare. In the one section of the NPRM that actually does propose section 706 relief for the BOCs, the Commission seeks comment on whether and when to approve limited modifications of LATA boundaries in order to facilitate BOC investment in advanced telecommunications capability. Ameritech believes that this proposal affords the Commission the opportunity not only to foster BOC investment in advanced telecommunications capability by eliminating one of the most significant impediment to such investment (that is, the existing LATA framework), but also to foster CLEC investment in such capabilities. Specifically, by conditioning a limited redefinition of LATA boundaries on a showing by a BOC that it has taken certain pro-competitive steps, specified herein, the Commission can "kill two birds with one stone." Ameritech discusses this proposal in more detail below, beginning with an explanation of why LATA boundaries are a significant impediment to "advanced

[99] NPRM, ¶1.

telecommunications capability" investment by the BOCs and then proposes a framework under which the Commission should grant the BOCs targeted LATA relief.

This framework is the direct result of discussions between Ameritech and a CLEC that is one of the leading providers of advanced telecommunications capability in the country today, NorthPoint Communications. Through those discussions, Ameritech sought to identify the needs of CLEC providers of advanced telecommunications capability and the steps that a BOC should be required to take before receiving interLATA relief. In so far as this proposal is the result of a collaborative effort between two competitors, it warrants serious consideration.

A. InterLATA Relief is Necessary to Encourage Deployment of Advanced Telecommunications Capability.

As the NPRM implicitly recognizes through its proposals for limited interLATA relief, the existing framework of LATA boundaries constitutes the most significant impediment to widespread deployment by the BOCs of advanced telecommunications capability. LATA boundaries impose unnecessary costs, particularly in rural areas, the very areas where section 706 relief is needed most. They also deny the BOCs the opportunity to recover those costs from heavy users of data services, such as large businesses and other institutions that need to transmit data among various locations.

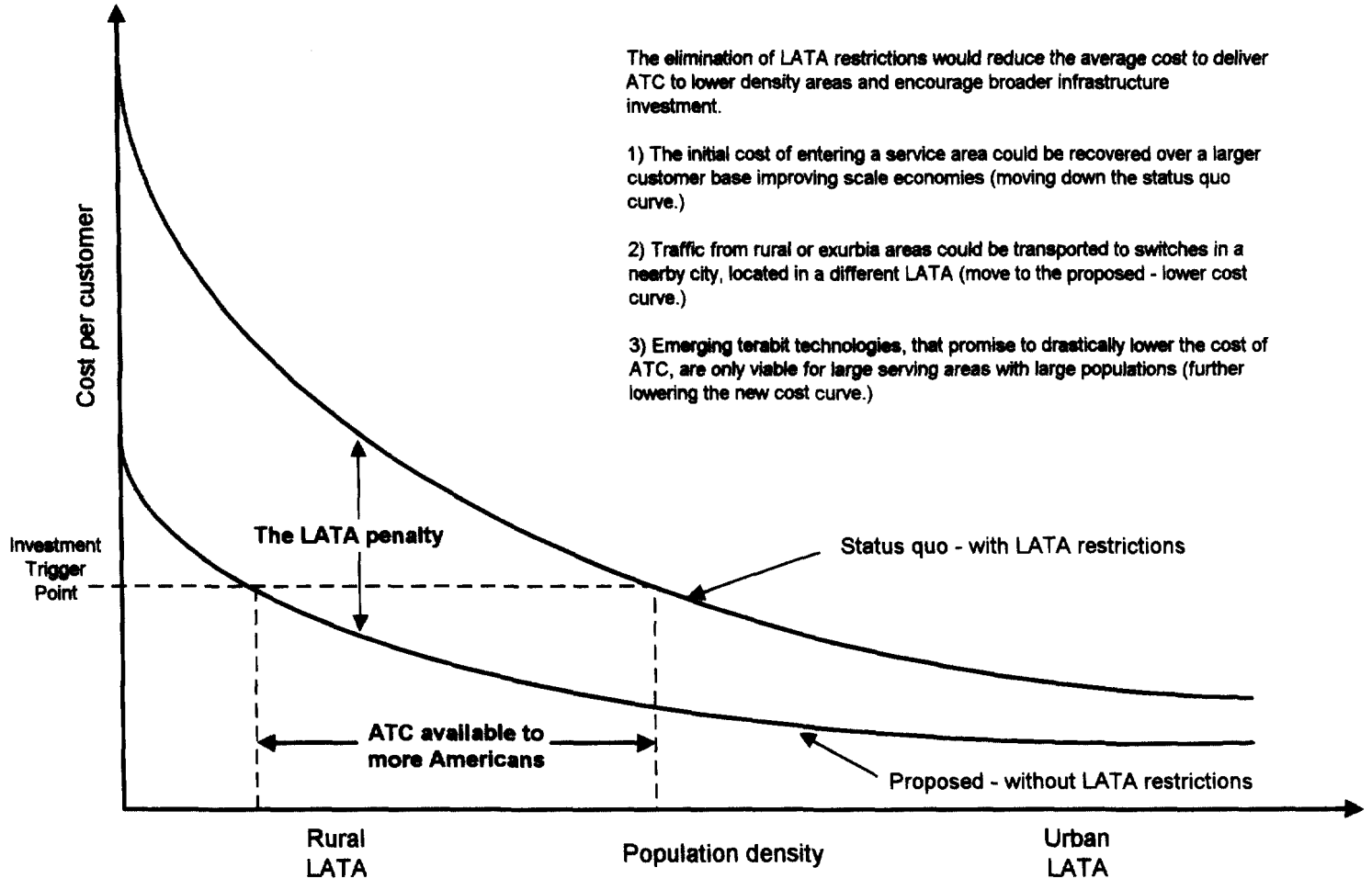
One of the most significant ways in which LATA boundaries discourage BOC investment in advanced telecommunications capability is by forcing the BOCs to deploy redundant facilities in every LATA in which they seek to provide advanced telecommunications capability services. In many cases, particularly in exurban areas where traffic is limited, these redundant facilities could not possibly be utilized to their full technological capacity. Consequently, the cost of deploying these facilities exceeds

the expected return from them. That being the case, the BOCs cannot justify investment in such facilities.

While this is a problem that afflicts all BOCs, it is particularly acute for Ameritech because of the very large number of LATAs in Ameritech's local service territory. There are 17 LATAs in Illinois, more than in California. There are 11 LATAs in Indiana, more than in New York[100]. All told, there are 41 LATAs in Ameritech's region, many of which are outside densely populated urban areas. Under the existing LATA framework, in order to deploy advanced telecommunications capability ubiquitously, Ameritech would have to place an ATM switch in every one of its LATAs. That, in turn, requires Ameritech not only to invest in hardware and software for each of these switches, but to incur a range of ancillary costs associated with switch deployment, such as for site construction, SONET facility equipment, battery plant, power plant, backup generators, HVAC equipment, and additional transport equipment. These costs add up to an initial investment expenditure of approximately $700,000 per switch site.

To be sure, this investment cost will not deter investment in advanced telecommunications capability in densely populated urban areas, or suburban areas with large concentrations of businesses. It is, however, a significant impediment to investment in sparsely populated exurban areas – the very areas to which section 706 is directed. In concrete terms, 25 of the LATAs served by Ameritech have insufficient network access lines to justify investment in advanced telecommunications capability facilities at this time for mass market deployment. As the graph below makes clear, this impediment would be removed if Ameritech were permitted to offer advanced telecommunications

[100] Illinois has 9 Ameritech-served LATAs, 3 independent ILEC-served LATAs and 5 LATAs which cross over from adjacent states. Indiana has 2 independent ILEC-served LATAs and 4 "cross-over " LATAs.



capability services across existing LATA boundaries. That is because Ameritech could aggregate data traffic from exurban areas and transport it to switches in nearby urban areas, substantially reducing the cost of serving low density areas by permitting Ameritech to recover the cost of advanced telecommunication capability facilities over a larger customer base.

The investment disincentive created by having to deploy facilities without traffic aggregation is compounded by the fact that LATA boundaries substantially limit Ameritech's ability to compete for heavy users of data services with offices in multiple LATAs, who could utilize such facilities' excess capacity and otherwise help defray the costs of such facilities. Currently, any such customer that wants to purchase advanced telecommunications capability from Ameritech must purchase separately dedicated transport to transmit their data between Ameritech's advanced telecommunications capability switches in different LATAs. This transport includes a dedicated circuit to the customer's designated interexchange carrier provided by Ameritech, and dedicated private lines provided by the interexchange carrier to carry the customer's data traffic across each LATA boundary. Not only is such dedicated transport enormously expensive, it is also quite inefficient because most customers (even those with heavy data needs) generally do not utilize the full increment of bandwidth typically sold by interexchange carriers (e.g., DS-1, DS-3, OC-3, OC-12). Because interexchange carriers with which Ameritech competes can provide end-to-end data services on their own facilities, and therefore can aggregate many customers' data traffic onto combined packet backbones, Ameritech is placed at an inherent cost disadvantage in bidding for such customers' data services business.

Ameritech could substantially reduce the cost of providing -- and hence the prices paid for -- advanced data services to customers with offices in multiple LATAs if it could aggregate such customers' traffic across existing LATA boundaries, and provide cost-effective end-to-end transport. For example, if Ameritech were afforded limited LATA relief to offer end-to-end frame relay services to a customer needing to connect 10 sites in

different LATAs to their central office, Ameritech could reduce the total cost to the customer for such services from approximately $33,300 per month currently to approximately $7,700 per month.[101] The approximately $25,600 difference between the cost of providing "advanced telecommunications capability" services to this hypothetical customer with and without LATA relief vividly demonstrates the cost disadvantage confronting Ameritech in seeking to offer advanced telecommunications capability services to businesses and other institutions with multiple LATA data services needs.

The regulatory-imposed cost disadvantage confronted by Ameritech in serving such multi-LATA customers is not the only impediment Ameritech faces in seeking to win such customers' advanced telecommunications capability business. Because of the interLATA prohibition, Ameritech cannot offer multiLATA customers a single point of contact, which most customers want, for network design, installation, maintenance and repair. Ameritech is, moreover, substantially limited in its ability to differentiate its advanced telecommunications capability services based on network reliability and survivability. The reason is that network reliability and survivability is inherently diminished to the extent that a customer relies on a dedicated private line NNI because, if that circuit goes out, the customer's entire network will be out of service until the circuit is restored. In addition, isolating and resolving network-related problems is much more difficult, time consuming, and costly when multiple carriers are involved. Consequently, the interLATA prohibition not only limits Ameritech's ability to compete effectively for

[101] This example assumes that the customer purchases T1 circuits that must cross existing LATA boundaries to connect 10 customer sites to their central office. Under this scenario, the total price for the 10 T1 circuits provided by Ameritech would be $5,053 per month currently, versus $7,707 per month if Ameritech could provide interLATA backbone transport (the increase in price per circuit to provide such transport would be $265 per month, assuming a 200 percent oversubscription of the circuit). The cost to the customer of interLATA transport currently would be approximately $28,300 (this estimate assumes that the private NNI used to provide interLATA transport is a DS-3 circuit.

multiLATA customers' advanced telecommunications capability business based on price, it also undermines its ability to differentiate its advanced telecommunications capability service offerings based on such non-price factors as customer service and service quality.

The competitive disadvantage imposed on Ameritech by the interLATA prohibition is not merely hypothetical. Ameritech routinely loses bids to serve customers with interLATA data needs (including businesses, state agencies, schools and universities). For example, Ameritech is effectively foreclosed from providing advanced telecommunications capability services to automobile manufacturers, some of the largest users of data services in Ameritech's region, because of its inability to provide end-to-end services. Because Ameritech must rely on a separate interexchange carrier to provide interLATA data transport to such customers, it cannot price its services competitively, or guarantee service levels. As a result, Ameritech is effectively prevented from offering competitive data services to as much as 90 percent of potential automotive industry customers in its region. And the automotive industry is just one of many manufacturing, service and financial institutions, including state government and numerous public and private educational and healthcare institutions with multi-LATA locations to which Ameritech cannot offer competitive data services to the interLATA restriction.

Even in the few instances when Ameritech has been able to win such customers' business, notwithstanding these disadvantages, it has had numerous problems serving or negotiating with multiLATA customers due to its inability to provide end-to-end services. For example, Ameritech recently concluded an agreement with the Oconomowoc, Wisconsin, school system to provide point-to-point data communications between their

schools via ATM. Because some of the system's sites are located in different LATAs, Ameritech was compelled to coordinate with other carriers for interLATA transport.

In addition, Ameritech is currently designing and deploying a state-wide ATM network in Indiana to provide high speed access for data, video and the Internet to K-12, higher education institutions, city and county offices, and state agencies. Because this network is comprehensive and includes multiple data functions and users, the incidental relief provided in section 271(g)(2) is far too narrow. The need for separate interLATA transport for this network substantially increases the price of this product, potentially making it unaffordable for K-12 institutions, and limits Ameritech's ability to offer customized rates because interexchange carriers currently charge a flat fee for the interLATA portion of the network. In addition, it delays ubiquitous deployment of this service by requiring customers to negotiate with an interexchange carrier for interLATA transport.

These are merely a few examples of the many problems Ameritech has encountered in seeking to serve customers with multi-LATA data needs. Nevertheless, they demonstrate some of the ways in which the interLATA prohibition seriously handicaps Ameritech in its ability to compete on an equal footing for the business of customers that need to transmit data among locations in different LATAs. The magnitude of this competitive handicap is clearly shown by the fact that Ameritech's share of the market for advanced data services is currently less than five percent in its region.

While the Commission may not be overly concerned about Ameritech's failure to win specific large customers, it should be concerned that, as a result, customers,

particularly in rural areas, pay higher prices for advanced data services, often making the cost of access to advanced services prohibitive contrary to the goals of section 706. Moreover, the Commission must recognize that Ameritech's inability to compete effectively for the advanced telecommunications capability business of multiLATA customers seriously limits Ameritech's ability to defray the investment costs of deploying advanced telecommunications capability ubiquitously throughout its region. If the interLATA prohibition were modified to permit Ameritech to compete on a level playing field for the business of these customers, it could expect to recover some of the costs of deploying advanced telecommunications capability in exurban areas. Absent such relief, Ameritech simply could not justify the investment necessary to deploy advanced telecommunications capability outside urban areas.

Those responsible for investment decisions at Ameritech have a fiduciary duty to the company's shareholders to limit the company's investments to those that are cost justified. If the Commission truly wants to encourage Ameritech's deployment of advanced telecommunications capability to customers throughout its region, it must alter Ameritech's investment calculus by granting targeted interLATA relief for advanced data services. Specifically, the Commission should modify LATA boundaries to permit Ameritech: (1) to provide interLATA transport within a state for data service provided to customers with multiple locations in that state; (2) to concentrate data traffic across existing LATA boundaries and transport it to one ATM switch; and (3) to provide transport from an ATM switch to the closest network access point ("NAP") outside the LATA in which the switch is located, even if the NAP is in a different state. Only then

could Ameritech justify the investment necessary to ensure that all customers throughout its region have access to advanced telecommunications capability.

B. Commission procedures For Providing InterLATA Relief Must Be Swift and Certain.

Although the Commission has implicitly acknowledged the need to modify the existing LATA framework to encourage widespread deployment of advanced telecommunications capability, its specific proposals fall far short of the mark. Substantively, to the extent the Commission implies that it might merely offer BOCs the chance to serve elementary and secondary schools and classrooms, its proposal represents an empty gesture because that freedom was expressly given by Congress over two years ago as incidental interLATA relief granted in section 272(g)(2).

Procedurally, the proposal is no better because it appears to contemplate a process that would be so cumbersome and time consuming as effectively to deny the BOCs any meaningful relief. Specifically, the Commission has suggested a process that would require the BOCs to file LATA modification petitions that demonstrate the specific need for interLATA relief on a LATA-by-LATA, or indeed a customer-by-customer, basis. If this process is adopted, the Commission will be confronted with hundreds of such requests, requiring it to make subjective, case-by-case determinations of whether LATA relief is necessary. Given the Commission's already limited resources, significant delays in the consideration of these requests would be inevitable.

Even if the Commission could consider these case-by-case requests on an expedited basis, it could not possibly do so quickly enough to provide the BOC's meaningful relief. The reason is no business seeking data solutions will wait while a BOC seeks Commission approval of the LATA boundary modifications necessary to

provide such solutions on a cost-effective basis. The customer will simply take its business to another provider of advanced data services. Thus, by the time the Commission acts on the BOC's request, the customer will, inevitably, have been lost.

The devastating effects of regulatory delay have long been understood by the Commission. For example, the Commission recognized that even a fourteen-day administrative delay in the deployment of new services can limit the ability of carriers to compete effectively by denying them the ability to respond quickly to customer demand. In declaring AT&T nondominant, the Commission specifically acknowledged that "the longer [fourteen-day] tariff notice requirements imposed on AT&T" limited AT&T's ability to "quickly introduc[e] new services,"[102] and therefore to compete effectively. The anticompetitive effect of such administrative delays is even more pronounced here because, under the fact-specific, subjective procedures contemplated by the Commission, it will take much longer for the Commission to resolve BOC LATA modification petitions and the outcome will be much more uncertain.

The only process that would afford the BOCs meaningful and effective LATA relief is one that can avoid these delays. Ameritech believes that the best approach would be to establish an objective test under which a BOC could obtain state-wide LATA relief for specified limited purposes.

Specifically, Ameritech proposes that a BOC should be granted the limited interLATA relief discussed above on a state-by state basis, if that BOC demonstrates that it: (1) complies with the currently applicable state and federal rules relating to the availability of ADSL, HDSL, and ISDN compatible loops; (2) complies with the

[102] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3288 (1995).